Award No. 4733
Docket No. 4528
2-FEC-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES' DEPARTMENT, A. F.-of L.-C. I. O. (Carmen)

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement and the provisions of Section 6, of the Railway Labor Act, as Amended, the Carrier unjustly and improperly removed Hose Cutters J. B. Holt, A. L. Shepp, Henry Robinson, J. C. Conner and C. J. Bruton, and Temporary Hose Cutters C. V. Kelly, William Atkins, R. L. Holt, O. L. Thomas, Ira Duncan, I. J. Duncan, George Morgan, Matthew Lewis, Zander Horne, J. R. Dyson, E. M. Newbold, Sylvester Dupree, F. R. Edgecomb, U. S. Morris, Robert Black, B. M. Hallmon, Robert Days, E. L. Williams, W. E. Robinson, B. E. Hines, E. W. Johnson, and C. W. Locke from its service as Hose Cutters in the Miami Terminal area on August 10, 1962.

2. That accordingly, the Carrier be ordered to restore the aforesaid employes to their former positions as Hose Cutters and compensate them for all wage loss and employment rights lost beginning on August 11 ,1962.

EMPLOYES' STATEMENT OF FACTS: Hose Cutters, J. B. Holt, A. L. Shepp, Henry Robinson, J. C. Conner and C. J. Bruton were employed as hose cutters in the Miami area by the Florida East Coast Railway Co., and were the remaining five employes left from an original group of 24 employes named as claimants in Award No. 1406 of the Second Division. The aforesaid employes on August 9, 1962, were called together by Mr. R. W. Wyckoff, assistant vice president and director of personnel for the Florida East Coast Railway Co. (hereinafter referred to as the carrier) and were advised individually by him to accept carrier's offer of approximately $10,000, after taxes, to resign from the service of carrier. This offer on the part of carrier was a surprise move as far as these five claimants were concerned, and after a discussion of the matter with Mr. Wyckoff, the employes requested that the matter be deferred until the following morning.

On the morning of August 10, 1962, these five claimants again met with carrier's director of personnel and because of fear for their future status they felt they had better do what Mr. Wyckoff demanded. On August 12, 1962, General Chairman R. M. Cooke, representative for this group of employes, dispatched the following letter to Carrier:

which was issued by the Honorable Judge Proby of Miami, Florida. Through this subpoena, you were able to secure copies of my entire file on this case for your future use.

Therefore, so that your files will be up to date, I am attaching the following items which were received in the mail today:

1. Copy of sworn statement made by Hose Cutter C. J. Bruton.

2. Copy of sworn statement made by Hose Cutters A. L. Shepp, J. B. Holt, Henry Robinson and J. C. Conner.

These sworn statements have reference to the subject matter contained in your letter of November 29, 1962, addressed to me, and are being added to the written record of this case."

The referred-to statements by Hose Cutters Bruton, Shepp, Holt, Robinson and Conner were obviously new evidence not discussed on the property, and Mr. Cooke saw fit to advise that he intended to introduce those statements in this case. Mr. Wyckoff acquiesed to their introduction with the specific understanding that material pertinent to the case developed through subpoena action on June 21, 1963, would be introduced by the Railway, Mr. Cooke voicing no further objection thereto, Mr. Wyckoff's letter in this regard to General Chairman Cooke of July 9, 1963. That letter read, in pertinent part, as follows:

"As you are aware, the statements of June 8, 1963 referred to in your letter have not been discussed with me on the property and, therefore, I can se no basis for your objection to inclusion of material pertinent to the case, developed through subpoena action on June 21, 1963, when this case is heard by the Second Division, N.R.A.B."

5. In resume it is the position of the Railway that Hose Cutters J. B. Holt, A. L. Shepp, Henry Robinson, J. C. Conner and C. J. Bruton, the last remaining hose cutters appearing on attachment "A" appended to the December 7, 1951 agreement fully described hereinabove, voluntarily resigned from the service of the Railway on August 10, 1962. Further, that since the termination of the seniority rights of these five (5) Hose Cutters exhausted all employes appearing on said attachment "A" of the December 7, 1951 agreement, pursuant to the explicit terms of that agreement the railway terminated the seniority rights of all "Temporary" hose cutters on August 10, 1962. It is the further position of the railway that its actions in this case were in complete accord with the December 7, 1951 agreement and no basis exists for the present claim of the employes.

For the reasons stated herein, the claim should be dismissed or denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization claims that the Carrier unjustly and improperly removed five permanent and 22 temporary hose cutters from their employment and requests restoration to their former positions and back pay.

The current Agreement, which consists of a letter dated December 7, 1951, is confined to fifteen "Hose Cutters" who were listed on an Attachment "A" provides, inter alia, as follows:

> "As additional Hose Cutters are hired they will be designated on the seniority list as 'Temporary', with the understanding that their seniority rights will terminate, coincident with the termination of the seniority rights of the last Hose Cutter listed on Attachment 'A'. . . ."

On August 9, 1962, only five of the Hose Cutters (Holt, Shepp, Robinson, Conner and Bruton) who were listed on the said Attachment "A" of the above referred to December 7, 1951 Agreement remained in the service of the Railway.

Mr. R. W. Wyckoff, Carrier's Director of Personnel, met with the above named Hose Cutters on August 9, 1962 and told them that if they would resign from the Carrier's service they would each be paid the sum of $10,000 net. After discussing this offer among themselves they stated they wanted to give further thought to the proposition. Mr. Wyckoff offered to accompany them to an attorney or the Union representative and the Hose Cutters decided that they would advise the Carrier of their decision on the next day.

When the employes returned on August 10, each of them notified Mr. Wyckoff that they accepted his offer, they agreed to resign and two of the men requested and received an additional $1000 apiece. They signed statements to the effect that they were resigning voluntarily. With the resignations of these five men the seniority rights of all "Temporary Hose Cutters" were automatically terminated in accordance with the above quoted provision of the Agreement of December 7, 1951.

The Organization claims that the Carrier's action in removing this group of employes from service was a capricious and arbitrary act which was in complete disregard of the Agreement and the Railway Labor Act. The Organization secured a series of statements from the five permanent Hose Cutters which state that the men resigned under duress and coercion. These statements are in direct conflict with the statements received from the same employes by the Carrier that they resigned voluntarily of their own free will in consideration of receiving the payments mentioned supra.

The Organization takes the further position that the five Hose Cutters did not have the right to resign without the permission of their bargaining representative; also that when the Agreement of December 7, 1951 was entered into it was not considered that the Carrier would have the right to terminate the seniority rights of Hose Cutters appearing on Attachment "A" to that Agreement through the method of purchasing their resignations.

There are thus two questions presented to the Board: Were the terminations of the five permanent Hose Cutters obtained in violation of the contract between the parties?; was the termination of the 22 temporary Hose Cutters violative of the said Agreement?

It is significant to point out that the Agreement nowhere prohibits the

action taken by the Carrier. Second Division Award 3640 enunciates a well recognized principle on this point, viz:—

> ". . . It is a fundamental principle of the employer-employe relationship that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language."

The termination of the 22 temporary hose cutters, which took place after the resignation of the 5 permanent employes who were the last hose cutters listed on Attachment "A", was directly in accordance with the provisions of the Agreement.

The record clearly shows that upon first receiving the Carrier's offer to make payments in exchange for their resignations the employes requested and received additional time to think the matter over. In fact it is not disputed that this time was granted and further that two of the affected employes bargained on their own behalf and succeeded in securing an additional $1000 apiece. Under these circumstances it can hardly be said that the five employes were coerced into resigning. Nowhere in the Agreement or in the Railway Labor Act is there any prohibition forbidding employes from resigning their jobs; nor is there any requirement that resignations must take place with the concurrence of the labor organization. It is indisputable that an employe has an absolute right to resign from his job; it seems to be a logical extension of this concept to go further and conclude that an employe has the right to resign in exchange for a monetary consideration.

While it is true that the circumstances surrounding the resignations in the instant case were unusual it cannot be said that the Carrier violated its Agreement.

In view of the above discussion and the conclusion reached in this case it would appear to be unnecessary to pass on the several procedural questions raised by the Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1965.

DISSENT OF LABOR MEMBERS TO AWARD No. 4733

The cursory consideration given by the majority of the Board to the fundamental issue in this case is regrettable. The award is based primarily on the conclusion that every employe has a right to resign from his job; that there is nothing, either in the agreement or in the Railway Labor Act, which limits that right and that "it seems to be a logical extension of this concept to go further and conclude that an employe has the right to resign for a monetary consideration."

But that was not the issue in this case. These were not simple resignations for a consideration affecting only the resignees. This was a purchase of an entire collective bargaining agreement covering twenty-seven employes in-

duced by the compensated resignations of five employes. The question here was whether the collective bargaining agreement, involving the work opportunities of a substantial group of employes, can be terminated by individual contracts between the carrier and a few individual employes covered thereby. In other words, were these few employes and the carrier, without the consent of the collective bargaining representative, empowered under the Railway Labor Act to enter into individual contracts which destroyed the rights of the entire group covered by the same collective agreement? e

The majority does not discuss and apparently did not even consider this issue, despite the fact that it has been clearly held by the United States Supreme Court that individual employes and a carrier may not consummate individual contracts which "limit or condition the terms of the collective agreement" and "conflict with its functions" or are "earned at the cost of breaking down standard thought to be for the welfare of the group." **Order of Railroad Telegraphers v. Railway Express Agency,** 321 U.S. 342; **J. I. Case Co. v. N. L.R.B.,** 321 U.S. 332.

In similar cavalier fashion, the majority concludes that "the agreement nowhere prohibits the action taken by the carrier" and that such action "was directly in accordance with the provisions of the agreement." These conclusions, in our view, disregard the well-settled principle that agreements must receive a reasonable interpretation which accords with the intention of the parties at the time they are executed and the further rule that an unjust interpretation will not be placed on agreements unless its terms compel such a conclusion.

The history of this and predecessor disputes of a similar nature between these parties, the underlying purpose which was to be served by the agreement, and the oppressive and unjust results which flow from the interpretation adopted by the majority all support the interpretation placed upon the agreement by the employe.

The record makes it abundantly clear that this agreement was to continue in existence until terminated by natural attrition, which would not include the purchase of seniority rights of the employes, and any other conclusion is completely unrealistic and at odds with any reasonable interpretation of the intent of the parties. We can agree with the statement of the majority that "the circumstances surrounding the resignations in the instant case were unusual." They were so unusual that, in our opinion, it cannot reasonably be said that the parties or the agreement contemplated that the carrier had the right to act as it did.

While it is true that there is conflicting testimony from the employes as to whether their resignations were obtained under duress or undue influence, there is, in addition, ample evidence to convince anyone familiar with labor relations in the railroad industry that these resignations were something short of voluntary.

The claim should have been sustained.

E. J. McDermott
C. E. Bagwell
T. E. Losey
Robert E. Stenzinger
James B. Zink